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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/923,212 08/06/01 LARKNER

T BARN / 92A

EXAMINER

IM22/0920

WOOD, HERRON & EVANS, L.L.P.  
2700 CAREW TOWER  
441 VINE ST.  
CINCINNATI OH 45202

DODGE, J.

ART UNIT

PAPER NUMBER

1723

DATE MAILED:

09/20/01

*4*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No. 09/923,212	Applicant(s) LARKNER ET AL
Examiner JOSEPH DRODGE	Art Unit 1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Aug 6, 2001.

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 21 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 21 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

15)  Notice of References Cited (PTO-892)      18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3      20)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: On page 7, in lines 11-14 the co-pending application is referenced by docket number and express mail certificate, it should be referenced by its patent application number .

Appropriate correction is required.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 68 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 21 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9 and 18 of copending Application No. 09/520,827. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claim differs from claim 9 of '827 only in omitting recited

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features of the sensing device generating a signal and the apparatus having a pump for moving water through the purification medium. However, it would have been obvious for the ordinarily skilled artisan to have modified the system of claim 9 by configuring the sensing device to generate such signal as in claim 1 of '827 to alert the user of the end of the dispensing period and by installing such pump , as in claim 18 of '827 so as to generate faster dispensing..

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*Allowable Subject Matter*

4. Claim 21 would be allowed, pending resolution of double patenting issues, in view of the recitation of "input device configured to allow a user to input a desired volume of purified water to be dispensed from the outlet of the water flow path during a dispense cycle"

The closest prior art is deemed to constitute Clack et al '810, Silverman et al '107 and Hsu '991, of record who individually and collectively otherwise teach the recited flow control and dispensing system including water purification device/medium, sensor, input device, pump and flow regulation device. However, such prior art of record does not suggest adapting the input device to "dispense cycles" or suggest such cycles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Drodge whose telephone number is (703)-308-0403. The examiner can normally be reached on Monday-Friday from approximately 8:30 AM - 4:45 PM.

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The fax phone number for this Group is (703)-872-9310. When filing a FAX in Tech Center 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are not for entry into the file of the application. This will expedite processing of your papers.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)-308-0661.

JWD

September 19, 2001

*Joseph D. Dodge*  
JOSEPH W. DODGE  
PRIMARY EXAMINER  
AU 1723